

# Committee on Resources

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## TESTIMONY OF JIM GRAY PRINCIPAL CHIEF OF THE OSAGE TRIBE

OVERSIGHT HEARING ON THE CURRENT REORGANIZATION OF TRUST MANAGEMENT AT THE  
BUREAU OF INDIAN AFFAIRS AND  
THE OFFICE OF THE SPECIAL TRUSTEE

BEFORE THE HOUSE RESOURCES COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

MAY 12, 2004

Good morning, Chairman Pombo, Ranking Member Rahall, and other members of the House Resources Committee. I am Jim Gray, Principal Chief of the Osage Tribe based in Pawhuska, Oklahoma. I am honored to be here to testify today before this Committee and provide the views of the Osage Tribe. Before I begin, I would like to thank the Committee for voting out the Osage membership and government form legislation last week. This legislation would be an enormous step forward for the Osage people.

Mr. Chairman, I appreciate the Committee holding this important hearing on trust reform and the efforts of the Department of the Interior to implement trust reform through the reorganization of the Bureau of Indian Affairs and the Office of the Special Trustee. I appreciate your willingness to take a close look at these serious issues. You have already held several hearings over the past year in different parts of the country on trust management and trust fund issues, including the Indian trust fund lawsuit, which is the reason that we are all sitting here today. The Cobell case served as a wake-up call to the Federal government about its gross mismanagement of trust assets and trust funds that Indians have known for over a hundred years but whose efforts to rectify or reform the system were met with a deaf ear. The Cobell case set off a chain reaction of events, including the reorganization at the Department of the Interior that will reverberate for decades to come.

The issue of trust reform strikes close to the heart of the Osage. The Osage Tribe continues to receive nearly all federal services directly from the Bureau of Indian Affairs and Office of Special Trustee, not through self-governance contracts or compacts. While I am firmly of the view that that the Osage Tribe should take over many of these functions, there are reasons why our Tribe has not done this on a significant scale. First, because of the environmental damage from minerals production on our Reservation and the federal government not enforcing or cleaning up this pollution as it should, there may be significant environmental liabilities associated with contracting certain federal programs. Second, these programs are so badly under-funded that taking them over only places an expensive obligation in our lap that we do not yet have the resources to supplement and make work as they should. Third, over a century of the federal government operating through the BIA in the daily lives of our people has created a conditioning, a mindset, that a pervasive BIA role is more comfortable than the unknown. These are difficult problems for a Tribe with very limited tribal resources to ensure efficient service delivery to our people. Nonetheless, the movement toward a greater tribal role in decision-making and administration of services is a concept I whole-heartedly embrace.

I also agree with the view of the National Congress of American Indians that the determination of how to best manage trust obligations to tribes and Indians should focus on the most local level, BIA agencies. The BIA Osage Agency is an example of an "agency specific plan" tailored to meet the specific minerals production needs of the Osage. 100% of the Osage Reservation subsurface is held in trust for the Osage Tribe. Income from minerals production purports to be paid into the federal trust funds system then out primarily to individual Indians, although non-Indians and corporations also receive funds from our trust asset. Because of the tribal and federal priority of Osage minerals production, the BIA Osage Agency administers all Osage minerals development, without the involvement of the Minerals Management Service or other agencies. We believe that this focus of the Osage Agency leads to greater efficiencies in Osage minerals

production.

It remains to be seen whether the BIA and OST reorganization will refocus on providing better frontline trust services to tribes and Indians at the local level rather than hunkering down against potential trust liability. Effective choosing and placement of trust officials are critical. My private and public sector experience informs me that service providing can only be as good as the people you put in those positions. I am disappointed that the tribes have had so little input on the hiring of key federal positions. I am concerned that overreaching to avoid trust liability may be overcoming the commitment to properly administering moral and legal trust obligations to tribes and Indians.

But focusing on trust reform only through the lens of BIA and OST reorganization risks losing site of the big picture of trust reform. Real trust reform begins with Congress. The United States Constitution specifically empowers Congress to regulate commerce between the different sovereigns: states, foreign nations, and Indian tribes. The United States Supreme Court has established that Congress has enormous powers over Indians and tribes. Working with the tribes, it is Congress that must unshackle the BIA and OST from statutory directives requiring BIA officials to look over the shoulders of tribal leaders and post-judge tribal decision-making.

The shameful federal policies of yesteryear that presumed Indian and tribal incompetence and sought to control Indian and tribal resources and decisions are still found in today's laws and therefore also the daily obligations of federal employees. The easy route for both Congress and the tribes is to scold the BIA and OST in harsh terms (which both usually deserve when it comes to trust management). The more difficult task is stepping back, taking a broader look at the problems, and seeking consensus from possible solutions. This in the political environment of dealing with tribes who have learned the hard way to fear what Congress might do.

The Osage Tribe offers several ideas.

- **Revisit Anachronistic Laws.** The BIA and OST continue to do what Congress has told them to do when it comes to pervasive control over the lives of Indians and second guessing tribal decision-making. Congress recently freed both the tribes and the BIA of most contract approvals under 25 U.S.C. §81. Furthermore, the new Navajo leasing statute limits the BIA role in Navajo leasing decisions. These are excellent examples of assisting both tribes and the federal agencies through relieving them of unwanted and unnecessary duties that have nothing to do with the core missions of either entity. Reforming the broader leasing statute and enacting the Indian energy provisions that were negotiated last year would be steps in the right direction.
- **Fractionation.** Enact a new law addressing fractionation of Indian lands, with the policy of tribal self-governance guiding this law.
- **Accountability.** There must be ways to hold federal decision-makers accountable for failure to properly administer trust obligations. For too long, Congress has treated the BIA and OST as welfare distributors and overseers, rather than agencies with moral and legal duties to tribes and Indians.
- **Funding.** Appropriate the funds the agencies need to do their jobs effectively and maintain the treaty and moral obligations of the United States to Indians and tribes.

We believe Congressional initiatives in this direction would help create a more efficient, more effective reform of the BIA and OST.

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.